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10/613,092

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EXAMINER

TRUONG, LOAN

ART UNIT

PAPER NUMBER

2114

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/613,092	Applicant(s) ISHII ET AL.	
	Examiner LOAN TRUONG	Art Unit 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This office action is in response to Request for Continuation filed on February 22, 2007 in application 10/613,092.
2. Claims 1-23 are presented for examination. Claims 1-3, 9, 11-13 are amended. Claims 21-23 are newly added.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 2-3, 9, 11 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 2-3, 11 and 13 disclosed the limitation of restoring the content of said hard disk into a new hard disk in said computer. It is not clear whether applicant means to replace the existing hard disk in said computer or replacing it altogether.

Claim 9 disclosed the limitation of having one or more server. As disclosed in the specification, only one backup server located in a backup service provision company (paragraph 0111).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard (Pub. No.: US 2001/0056425) in further view of Loaiza et al. (US 2002/0049950).

In regard to claim 1, Richard disclosed a backup system for backing up a hard disk of a computer which is connected to a server via a network, characterized in that said server comprises:

a boot OS creation section adapted to create a boot OS for said computer (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

a backup section adapted (*BIOS prompts the user to choose whether to boot on the CDROM or on the C: drive, fig. 5, 42, paragraph 0080*) to store as a file content of the hard disk, inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys) and rebuild.exe., paragraph 0070 lines 1-24*), in said computer into a designated backup destination (*server receives backup service request for restore CDROM, fig. 4, 31, paragraph 0069-0070*) regardless of a type of an OS installed and a type of a file system (*backup agent send backup service request to server by sending the OS type and version with ID and password, fig. 2, 11-12, paragraph 0051*);

a management information database adapted to store therein management information of said computer (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*); and

a kernel image adapted to serve for the creation of said boot OS (*ISO image, fig. 4, 37, paragraph 0068-0070*).

Richard does not teach the system of said designated backup destination selectively comprising any of a plurality of potential backup destinations;

Loaiza et al. teach of a data integrity verification mechanism provided for backing-up data with the backup unit utilizing a variety of different types of backup components including tape drive, ZIP drive, DVD, CD ROM and floppy disk units (*paragraph 0068*).

It would have been obvious to modify the system of Richard by adding Loaiza et al. data integrity verification mechanism. A person of ordinary skill in the art at the time of applicant's invention would have been motivated to make the modification because it would provide a wide variety of backup mechanism and medium (*paragraph 0068*).

In regard to claim 2, Richard disclosed the backup system as claimed in claim 1, said server further comprising a restore section adapted to restore the content of said hard disk into the same hard disk in said computer or into a hard disk of another computer by using the file which has been stored as a file by said backup section (*execute POST (power-on-self-test) and start booting on CDROM, fig. 5, 41, 43, paragraph 0078-0081*).

With reference to a restore section restoring the content of said hard disk into a new hard disk, refer to the 35 U.S.C. 112 rejection above.

In regard to claim 3, Richard disclosed a backup system for backing up a hard disk of a computer, which is connected to a server via a network, characterized in that said server, comprises:

i) a boot OS creation section adapted to create a boot OS for said computer and to store it into a boot media (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

ii) a management information database adapted to store therein management information of said computer (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*); and

iii) a kernel image adapted to serve for the creation of said boot OS, and further characterized in that said boot media (*dos kernel in the bootable partition of the backup CDROM, fig. 4, 32, paragraph 0070*) comprises:

iv) a backup section adapted to store as a file a content, inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys), of the hard disk in said computer into a designated backup destination (data set table, fig. 4, 34, paragraph 0072), regardless of a type of an OS installed and a type of a file system (backup agent send backup service request to server by sending the OS type and version with ID and password, fig. 2, 11-12, paragraph 0051); and*

v) a restore section adapted to restore the content of said hard disk into the same hard disk in said computer or into a hard disk of another computer by using the file which has been stored as a file by said backup section (*booting partition of the CDROM by POST (power-on-self-test) operation, fig. 5, 41, 43, paragraph 0079-0081*). *With reference to a restore section restoring the content of said hard disk into a new hard disk, refer to the 35 U.S.C. 112 rejections above.*

Richard does not teach the system of said designated backup destination selectively comprising any of a plurality of potential backup destinations;

Loaiza et al. teach of a data integrity verification mechanism provided for backing-up data with the backup unit utilizing a variety of different types of backup components including tape drive, ZIP drive, DVD, CD ROM and floppy disk units (*paragraph 0068*).

Refer to claim 1 for motivational statement.

In regard to claim 4, Richard disclosed the backup system as claimed in claims 1, wherein said boot OS creation section includes:

a parameter creating portion adapted to allow said kernel image to serve as said boot OS (*booting partition is arranged to contain a set of file systems, paragraph 0070*); and

a writing portion adapted to store said boot OS (*CDROM which has a booting partition, paragraph 0067*).

In regard to claim 5, Richard disclosed the backup system as claimed in claims 1, wherein said backup section includes:

an information managing portion adapted to manage information for backup (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*);

a reading portion adapted to read the content of the hard disk in said computer while compressing it (*backup agent compressed data to be transmitted through the network, paragraph 0064*); and

a writing portion adapted to write said compressed content into said designated backup destination (*server receives compressed data sent from the backup agent, paragraph 0064*).

In regard to claim 6, Richard disclosed the backup system as claimed in claims 1, wherein said restore section includes:

an information managing portion adapted to manage information for restore (*BIOS prompt the user to choose where to boot and permits the booting process to proceed, paragraph 0080-0081*);

a reading portion adapted to read a file of a restore origin while expanding it (*extract OS id and reestablish setting, fig. 5, 51, paragraph 0088*); and

a writing portion adapted to write this expanded content into a hard disk as a restore destination (*rebuild.exe will manipulate FAT directory and file system objects, paragraph 0091*).

In regard to claim 7, Richard disclosed the backup system as claimed in claims 1, wherein said backup section includes a padding portion adapted to pad an unassigned region in the hard disk in said computer with specific values (*backup agent performs an analysis of backup objects and establishes a lists of those representative of configuration, paragraph 0053*).

It is inherent that unassigned regions or non-representative of configuration regions are not transmitted to the backup server, therefore it would have a specific value of null or zero.

In regard to claim 8, Richard disclosed the backup system as claimed in claims 5, wherein said information managing portion included in said backup section is adapted to store certification data, and wherein said restore section includes a certifying portion adapted to perform certification using said stored certification data by said information managing portion included in said restore section (*prompts the user to enter the id and password, paragraph 0084-0086*).

In regard to claim 9, Richard disclosed a method of backing up a hard disk connected to a computer, characterized by comprising:

creating a boot OS for booting only said computer by using an external storage device or via a network, independently of an OS installed in said computer and a type of a file system, as a backed-up object (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

booting said computer with said boot OS (*user selects CDROM to boot from the booting partition, fig. 5, 43, paragraph 0081*); and

backing up the content inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys) and rebuild.exe., paragraph 0070 lines 1-24*), of a hard disk connected to said computer into a server via said network (*backup agent transmits each backup object to the server, fig. 2, 16, paragraph 0054*), into a storage medium over said network (*backup database, fig. 1, 4, paragraph 0048*), or into a storage medium directly connected to said computer (*CDROM, paragraph 0081*).

*With reference to a selected one of a server, refer to the 35 U.S.C. 112 rejections above.*

In regard to claim 10, Richard disclosed the method as claimed in claim 9, further comprising restoring said content of the hard disk connected to said computer into a hard disk connected to another computer by using a file backing up the content of the hard disk in said computer (*config.sys cause execution of rebuild.exe which re-establishes a set of parameters for ensuring a correct starting of the operating system at the next boot of the machine, fig. 5, 45, 51,*

*paragraph 0083 and 0088).*

In regard to claim 11, Richard disclosed a program of machine-readable instructions executable by a digital processing apparatus to perform a method of backing up a hard disk of a computer, said program including modules having functions comprising:

a creating function adapted to create a boot OS for said computer (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

a backup function adapted (*BIOS prompts the user to choose whether to boot on the CDROM or on the C: drive, fig. 5, 42, paragraph 0080*) to store as a file the content, inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys) and rebuild.exe., paragraph 0070 lines 1-24*), of a hard disk in said computer into a designated backup destination (*server receives backup service request for restore CDROM, fig. 4, 31, paragraph 0069-0070*), regardless of a type of an OS installed and a type of a file system (*backup agent send backup service request to server by sending the OS type and version with ID and password, fig. 2, 11-12, paragraph 0051*); and

a restore function adapted to restore the content of said hard disk into the same hard disk in said computer by using the file which has been stored as a file by said backup function (*execute POST (power-on-self-test) and start booting on CDROM, fig. 5, 41, 43, paragraph 0078-0081*). *With reference to a restore section restoring the content of said hard disk into a new hard disk, refer to the 35 U.S.C. 112 rejection above.*

Richard does not teach the system of said designated backup destination selectively comprising any of a plurality of potential backup destinations;

Loaiza et al. teach of a data integrity verification mechanism provided for backing-up data with the backup unit utilizing a variety of different types of backup components including tape drive, ZIP drive, DVD, CD ROM and floppy disk units (*paragraph 0068*).

Refer to claim 1 for motivational statement.

In regard to claim 12, Richard disclosed a backup service provision system for providing a backup of a hard disk of a computer connected to a server via the Internet (*the web, fig. 1, 1*), characterized in that said server comprises:

a boot OS creating section adapted to create a boot OS for said computer (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

a backup section adapted to boot said computer with said boot OS (*BIOS prompts the user to choose whether to boot on the CDROM or on the C: drive, fig. 5, 42, paragraph 0080*) and to store as a file a content, inclusive of a system region (*the bootable partition or bootstrap further comprises the dos kernel (io.sys, msdos.sys, config.sys) and rebuild.exe., paragraph 0070 lines 1-24*), of the hard disk in said computer into a designated backup destination (*server receives backup service request for restore CDROM, fig. 4, 31, paragraph 0069-0070*) regardless of a type of an OS installed and a type of a file system (*backup agent send backup service request to server by sending the OS type and version with ID and password, fig. 2, 11-12, paragraph 0051*);

a management information database adapted to store management information for said computer (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*); and

a kernel image adapted to serve for the creation of said boot OS (*ISO image, fig. 4, 37, paragraph 0068-0070*), and wherein said backup service provision system is selectively (*send backup service request to server, fig. 2, 11*) configured to back up any computers connectable to said server (*backup and restore process are adapted to a corporate environment, fig. 1, paragraph 0027*).

Richard does not teach the system of said designated backup destination selectively comprising any of a plurality of potential backup destinations;

Loaiza et al. teach of a data integrity verification mechanism provided for backing-up data with the backup unit utilizing a variety of different types of backup components including tape drive, ZIP drive, DVD, CD ROM and floppy disk units (*paragraph 0068*).

Refer to claim 1 for motivational statement.

In regard to claim 13, Richard disclosed the backup service provision system as claimed in claim 12, wherein said server further comprises a restore section adapted to restore the content of said hard disk into the same hard disk in said computer by using the file which has been stored as a file by said backup section (*execute POST (power-on-self-test) and start booting on CDROM, fig. 5, 41, 43, paragraph 0078-0081*).

*With reference to a restore section restoring the content of said hard disk into a new hard disk, refer to the 35 U.S.C. 112 rejection above.*

In regard to claim 14, Richard disclosed the backup system as claimed in claim 2, wherein said boot OS creation section includes:

A parameter creating portion adapted to allow said kernel image to serve as said boot OS (*booting partition is arranged to contain a set of file systems, paragraph 0070*); and

A writing portion adapted to store said boot OS (*CDROM which has a booting partition, paragraph 0067*).

In regard to claim 15, Richard disclosed the backup system as claimed in claim 3, wherein said boot OS creation section includes:

A parameter creating portion adapted to allow said kernel image to serve as said boot OS (*booting partition is arranged to contain a set of file systems, paragraph 0070*); and

A writing portion adapted to store said boot OS (*CDROM which has a booting partition, paragraph 0067*).

In regard to claim 16, Richard disclosed the backup system as claimed in claim 2, wherein said backup section includes;

An information managing portion adapted to manage information for backup (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*);

A reading portion adapted to read the content of the hard disk in said computer while compressing it (*backup agent compressed data to be transmitted through the network, paragraph 0064*); and

A writing portion adapted to write said compressed content into said designated backup destination (*server receives compressed data sent from the backup agent, paragraph 0064*).

In regard to claim 17, Richard disclosed the backup system as claimed in claim 3, wherein said backup section includes;

An information managing portion adapted to manage information for backup (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*);

A reading portion adapted to read the content of the hard disk in said computer while compressing it (*backup agent compressed data to be transmitted through the network, paragraph 0064*); and

A writing portion adapted to write said compressed content into said designated backup destination (*server receives compressed data sent from the backup agent, paragraph 0064*)..

In regard to claim 18, Richard disclosed the backup system as claimed in claim 2, wherein said restore section includes:

An information managing portion adapted to manage information for restore (*BIOS prompt the user to choose where to boot and permits the booting process to proceed, paragraph 0080-0081*);

A reading portion adapted to read a file of a restore origin while expanding it (*extract OS id and reestablish setting, fig. 5, 51, paragraph 0088*); and

A writing portion adapted to write this expanded content into a hard disk as a restore destination (*rebuild.exe will manipulate FAT directory and file system objects, paragraph 0091*).

In regard to claim 19, Richard disclosed the backup system as claimed in claim 2, wherein said backup section includes a padding portion adapted to pad an unassigned region in the hard disk in said computer with specific values (*backup agent performs an analysis of backup objects and establishes a lists of those representative of configuration, paragraph 0053*).

It is inherent that unassigned regions or non-representative of configuration regions are not transmitted to the backup server, therefore it would have a specific value of null or zero.

In regard to claim 20, Richard disclosed the backup system as claimed in claim 6, wherein said information managing portion included in said backup section is adapted to store certification data, and wherein said restore section includes a certifying portion adapted to perform certification using said stored certification data by said information managing portion included in said restore section (*prompts the user to enter the id and password, paragraph 0084-0086*).

In regard to claim 21, Richard teach the backup system in claim 1, wherein said plurality of potential backup destinations comprises:

A magnetic tape device (*C: drive, paragraph 0080*);

A cassette diskette (CD) (*creation of the CDROM, paragraph 0068*); and  
Said server (*backup object is being analysed and sent to a remote server, paragraph 0009*).

Richard does not teach the backup system wherein a potential backup destination comprises a floppy disk (FD).

Loaiza et al. teach of a data integrity verification mechanism provided for backing-up data with the backup unit utilizing a variety of different types of backup components including tape drive, ZIP drive, DVD, CD ROM and floppy disk units (*paragraph 0068*).

Refer to claim 1 for motivational statement.

In regard to claim 22, Richard disclosed the backup system of claim 1, wherein a selection of said designated backup destination further comprises a selection of one of a network backup style (*backup object is being systematically analysed and sent to a remote server, paragraph 0009*) and a local backup style (*user with a stand-alone computer may take advantage of hard disk image software such as PowerQuest TM and NORTON TM, paragraph 0003*).

In regard to claim 23, Richard disclosed the backup system of claim 1, wherein a restoration of contents of said designated backup destination (*CDROM, paragraph 0068*) onto a computer (*user requesting backup, paragraph 0067-0070*) further comprises designating said backup destination as a restore origin (*CDROM, paragraph 0068*).

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Loan Truong whose telephone number is (571) 272-2572. The examiner can normally be reached on M-F from 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**SCOTT BADERMAN**  
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